

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GWACS ARMORY, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case Number
)	20-cv-0341-CVE-SH
KE ARMS, LLC, RUSSELL PHAGAN,)	BASE FILE
SINISTRAL SHOOTING,)	
TECHNOLOGIES, LLC, BROWNELLS,)	Consolidated with:
INC., and SHAWN NEALON,)	Case No.
)	21-CV-0107-CVE-JFJ
Defendants.)	
)	
and)	
)	
KE ARMS, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GWACS ARMORY, LLC, GWACS)	
DEFENSE INCORPORATED, JUD)	
GUDGEL, RUSSELL ANDERSON, DOES)	
I through X, and ROE)	
CORPORATIONS I through X,)	
)	
Defendants.)	

THE DEPOSITION OF MICHAEL ERIC KENNEY,
taken on the 27th day of October, 2021, between the hours
of 8:34 a.m. and 4:54 p.m., on behalf of the Plaintiff
GWACS, pursuant to Federal Rules of Civil Procedure, at
the law offices of Hall, Estill, Hardwick, Gable, Golden &
Nelson, 320 South Boston Avenue, Suite 200, Tulsa,
Oklahoma, before Linda Fisher, CSR-RPR, and Notary Public
in and for the State of Oklahoma.

1 records. It was --

2 Q. You don't know how much you paid for the Mark I
3 designs?

4 A. It was a few thousand dollars.

5 Q. Did you know that Mr. Phagan had offer from my
6 clients to take that in exchange for a gun?

7 A. Maybe he should have bought it.

8 Q. That's not what I asked you.

9 A. No, I was not.

10 Q. So the Mark I designs were purchased from
11 Russell Phagan by KE Arms prior to KE Arms' purchase of
12 the MKII designs from Mr. Nealon; is that your testimony?

13 A. Correct.

14 Q. Do you know when Russell Phagan went to work
15 for KE Arms?

16 A. 2015.

17 Q. Was he a consultant when he sold you the MK I
18 designs or was he an employee?

19 A. I would have to look at the exact dates.

20 Q. You don't remember off the top of your head
21 whether he was an employee or just a consultant at that
22 time?

23 A. Six years ago, no. I don't remember exactly.

24 Q. Why did you buy those designs? You said you
25 are a collector. But you said you were looking into

1 A. Yes. My understanding is we purchased some of
2 the remaining stock and then we have since sold all of
3 them.

4 Q. When you were introduced to the folks at GWACS
5 Armory, that was done through Russell Phagan, correct?

6 A. Correct.

7 Q. And did you work on a variance with GWACS
8 Armory previously?

9 A. Previously to being introduced?

10 Q. No, sorry, that was a very poorly worded
11 question.

12 A. Okay.

13 Q. After you were introduced, did you work on a
14 variance with GWACS Armory?

15 A. I believe we did.

16 Q. And that was for you, being KE Arms, to produce
17 a lower with receiver GWACS Armory's name on it, correct?

18 A. I believe, are you talking about one of our
19 alloy lowers?

20 Q. Yes.

21 A. I would have to go through the record. I don't
22 know if that was in your question.

23 Q. Have you done any other variances with GWACS
24 Armory, to your knowledge?

25 A. Not that I'm aware. Like I said, I would have

1 to go check the records.

2 Q. When Russell Phagan introduced you to the
3 people at GWACS Armory, what was his role in your company?

4 A. He would have been in charge of sales and
5 marketing.

6 Q. Do you know why KE Arms entered into an NDA
7 with GWACS Armory?

8 A. My understanding at the time was they had a new
9 lower that they were wanting to build with an adjustable
10 buttstock. And we were looking to discuss with them
11 potentially working with them on some equipment to meet
12 the demands of the 2016 election rush we were all looking
13 at.

14 Q. So that would have been as -- and your
15 manufacturer hat was what you were wearing when you did
16 that, right?

17 A. Probably my entrepreneur hat, if anything else.

18 Q. Seizing on an opportunity?

19 A. Well, like I said, we're always looking at
20 various opportunities and what can be addressed.

21 Q. So you entered into an NDA with Armory, and
22 sorry, it's Exhibit 6 in this book. That's going to be in
23 that book right there. If you will turn to the Tab 6 for
24 me, please.

25 Sorry, it's not 6 apparently. How about 9, which

1 question.

2 Q. (By Mr. Bogan) Did you --

3 MR. CALAWAY: But if you know what he's
4 talking about, --

5 MR. BOGAN: I got it. Thank you.

6 Q. (By Mr. Bogan) Did you receive another
7 investment packet in 2018 from Armory?

8 A. I'm not aware of that. I'm not aware of that.

9 Q. Let's turn to Exhibit 23 in the book in front
10 of you. If you will take a look at that and let me know
11 if that is the packet you received back in 2015.

12 A. To be honest with you, I haven't looked at this
13 since 2015, but...

14 Q. Let's look at the first page where it says the
15 Executive Summary. It says, "GAL is currently seeking
16 \$500,000 to finalize development and bring to market the
17 new CAV-15A and CAV-15 MK III lower receivers/rifles."

18 Do you see that?

19 A. The first section there?

20 Q. It's the Executive --

21 A. I see it.

22 Q. -- Summary, second slide, second paragraph,
23 second bullet point.

24 A. Oh, correct.

25 Q. Do you see that?

1 A. Yeah.

2 Q. Is that consistent with your recollection of
3 what they were doing and seeking?

4 A. Like I said, my understanding back then -- and
5 I don't really remember going through every detail of
6 this, but that they were high level points looking at
7 \$500,000 for 20 percent, and --

8 Q. Who provided you with the packet? Did Russell
9 Phagan send it to you?

10 A. Yeah. It would have gone to him first and then
11 come to me.

12 Q. So this went through Russell Phagan to you,
13 correct?

14 A. I believe so.

15 Q. And do you have any reason to believe that this
16 packet that you have in front of you is not what you
17 received in 2015?

18 A. I don't believe so.

19 Q. You don't believe this --

20 A. Believe there was any reason I would not think
21 this is the package that we received.

22 Q. You think this is it. And if you look, on the
23 very first slide, it says, "CAV-15, MKIII." Do you see
24 that?

25 A. Correct.

1 Q. And when Mr. Phagan went to work for KE Arms,
2 you didn't have a polymer lower receiver at that time,
3 correct?

4 A. No, we did not.

5 Q. Now, the KE-9 was -- is another polymer lower
6 that you sell, right?

7 A. Correct.

8 Q. Do you have a KE-9 that's an aluminum lower?

9 A. Yes, we do.

10 Q. And how does the public, if I want to go buy a
11 polymer KE-9, how do I know whether it's aluminum or
12 polymer?

13 A. The description on the product.

14 Q. If I want to buy a polymer lower for your
15 AR-15s, how do I know which one?

16 A. The product descriptions, I guess, on the
17 website.

18 Q. Okay. So why did you pick the name KP?

19 A. The Kenney, Kenney Arms polymer.

20 Q. Okay.

21 A. When we found out that we couldn't use MK
22 because of Ruger, we picked a different moniker for it.

23 Q. Do you call the K -- the polymer KE-9, is that
24 actually called the KP-9 or is it called the KE-9?

25 A. KP-9.

1 you know, kind of a rough design or maybe an early concept
2 or something like that. Do you know what he would have
3 been talking about there?

4 A. No. If he said that, he would have been
5 incorrect.

6 Q. Okay. What was Russell Phagan's role in the
7 KP-15 project?

8 A. To help with the development of it as we've
9 been speaking about all day.

10 Q. Did he have any specific role as far as, you
11 know, I believe we talked earlier about sales and
12 marketing is not necessarily your strong suit.

13 A. Right.

14 Q. And I believe it is Mr. Phagan's, is that
15 right?

16 A. Correct.

17 Q. So one of Mr. Phagan's roles was going to be
18 sales and marketing, right?

19 A. Correct.

20 Q. Mr. Phagan brought InRange to you, correct?

21 A. I'm sorry?

22 Q. Mr. Phagan brought InRange to you, correct?

23 A. Yeah. Not just on this, but he introduced me
24 to InRange pretty much after we met.

25 Q. I believe I've seen somewhere where it really

1 appeared that Mr. Phagan was really the biggest driver
2 behind this project.

3 A. Oh --

4 Q. would you agree with that statement?

5 MR. CALAWAY: Object to the form.

6 A. -- I think we're all, you know, had reason to
7 push the project. I don't know, I mean, obviously, he
8 grew up with the thing; so...

9 Q. (By Mr. Bogan) Right. Would you say that Mr.
10 Phagan spent more time on the KP-15 project than you did,
11 just time? Obviously, you put up the money.

12 A. I think we both spent a lot of time with it but
13 obviously I'm spread thin between a lot of different
14 organizations. So, you know, in the automotive industry,
15 it would have been the one who was running the project
16 kind of thing.

17 Q. Project lead?

18 A. Yeah.

19 Q. I guess I could have asked that a lot easier
20 and just said, Is he the project lead instead of the guy
21 driving it. But I didn't get there. I apologize.

22 A. Fair enough.

23 Q. It took me a little longer. I think I asked
24 you this, and I apologize if I did, but did you have an
25 NDA with Moldworx?